

**MINUTES OF THE
STATE WATER DEVELOPMENT COMMISSION**

Tuesday, November 13, 2012 – 3:30 p.m. – Room 30 House Building

Members Present:

Sen. Margaret Dayton, Senate Chair
Rep. Patrick Painter, House Chair
Sen. Gene Davis
Sen. David P. Hinkins
Sen. Scott K. Jenkins
Rep. Joel K. Briscoe
Rep. Melvin R. Brown
Rep. Susan Duckworth
Rep. Gage Froerer
Rep. Keith Grover
Rep. Don L. Ipson
Rep. Michael E. Noel
Mr. Jay Mark Humphrey
Mr. Dallin Jensen
Ms. Voneene Jorgensen
Mr. Darrell Mensel
Mr. Mike Mower

Mr. Joseph Paulick
Mr. Warren Peterson
Mr. Gene Shawcroft
Ms. Amanda Smith
Mr. Mike Styler
Mr. Ron Thompson
Mr. Boyd Workman

Members Absent:

Sen. Kevin T. Van Tassell
Comm. Leonard Blackham
Mr. Tage Flint
Mr. David Ure

Staff Present:

Mr. J Brian Allred, Policy Analyst
Ms. Tracy J. Nuttall, Associate General Counsel
Ms. Anna M. Allen, Legislative Secretary

Note: A list of others present, a copy of related materials, and an audio recording of the meeting can be found at www.le.utah.gov.

1. Commission Business

Chair Painter called the meeting to order at 3:48 p.m.

MOTION: Sen. Dayton moved to approve the minutes of the October 16, 2012, commission meeting. The motion passed unanimously with Rep. Brown and Rep. Grover absent for the vote.

2. Office of Legislative Research and General Counsel Briefing Paper - "How Utah Water Works"

Mr. Allred and Ms. Nuttall discussed and distributed "How Utah Water Works." They briefly described each section of the paper and responded to questions from the commission.

3. Public Trust Principles and Water Rights

Mr. J. Craig Smith, Smith Hartvigsen, and chair of the Public Trust Doctrine Working Group, introduced the two approaches to public trust doctrine legislation that the working group has discussed. He stated that the first approach is more narrow, while the second approach is more broad.

Mr. Steve Clyde, Clyde Snow & Sessions, and Public Trust Doctrine Working Group member, discussed "Public Trust Language," which provides the language for the first, more narrow, approach considered by the working group. He said the approach is narrow in that it limits the impact of a public trust doctrine,

specifically to diversionary rights and expressed concern for the broader approach. Mr. Clyde responded to questions from the commission.

Rep. McIff discussed draft legislation "Public Trust Principles and Water Rights" (2013fl-0403/006), which provides the language for the second, and broader, approach considered by the working group. He said that the public trust doctrine is difficult to define from state to state and that the Legislature can either adopt the policy on the issue, or allow the judiciary to define the public trust doctrine for the state. He recommended that the Legislature develop the basic public trust doctrine concepts and that the state engineer should be guided by these concepts. Rep. McIff responded to questions from the commission.

Chair Painter showed support for Rep. McIff's ideas.

MOTION: Rep. Noel moved to pass out draft legislation "Public Trust Principles and Water Rights" with a favorable recommendation from the commission.

Rep. McIff expressed concern with Mr. Clyde's language for the public trust doctrine.

Mr. Allred commented that Mr. Clyde's recommended language is not in legislative form, but draft legislation "Public Trust Principles and Water Rights" is in legislative form. Thus, Mr. Allred clarified, the commission could endorse Mr. Clyde's proposed language, but could not endorse the language as a commission bill.

SUBSTITUTE MOTION: Sen. Dayton moved that the commission endorse the proposed language for Section 73-1-1, Utah Code, Annotated submitted by Mr. Clyde and consider the language of draft legislation "Public Trust Principles and Water Rights" for potential future study. The substitute motion passed with Rep. Briscoe, Rep. Brown, Rep. Noel, and Rep. Painter voting in opposition.

4. Water Rights - Change Application Amendments

Rep. McIff discussed and distributed "Working Draft: Water Rights - Change Application Amendments." He stated that the legislation addresses the issue of who can file change applications. He also said that the legislation allows for the involvement of the state engineer earlier on in the application process and requires a water right user's consent in order to sell a portion of that right. Rep. McIff responded to questions from the commission.

The commission took no action on the draft legislation.

5. Proposed Snake Valley Agreement

Mr. Mower, Deputy Chief of Staff, Office of the Governor, distributed a letter introducing his discussion points. He also distributed the Snake Valley Agreement document, "Agreement for Management of the Snake Valley Groundwater System," which addresses the disposition, division, and distribution of water in the Snake Valley area in Utah and Nevada.

Finally, Mr. Mower passed out a letter from Millard County, "Millard County's opposition to the draft Utah-Nevada Snake Valley groundwater agreement," which explains Millard County's position on the Snake Valley agreement. Mr. Mower explained that the question the commission needs to consider is whether Utah should sign the agreement or allow Nevada to take legal action against the state.

Mr. Steve Erickson, Great Basin Water Network, stated the network's position on the agreement. He said that the network is not opposed to an agreement with Nevada, but that there are issues that need to be addressed in the current agreement. He expressed the network's opinion that the current agreement does not have an equitable division of water and does not protect the environment or water rights holders in Utah. Mr. Erickson also emphasized the importance of the timing of the agreement and the need to renegotiate the problems of the agreement. He suggested that this issue be presented to the Snake Valley Aquifer Advisory Council.

Mr. Clyde discussed and distributed "Review of Agreement for Management of the Snake Valley Ground Water System and Snake Valley Environmental Monitoring and Management Agreement," which describes his, Mr. Jensen's, and Mr. Peterson's review of the Snake Valley Agreement. He stated their opinion that although the agreement has room for improvement, they feel that it would be better for Utah to sign the agreement than to allow Nevada to take legal action on the matter. Mr. Clyde said that the agreement is process-oriented and allows for the equitable division of water rights in Utah and Nevada.

Mr. Styler called the commission's attention to the changes to the proposed agreement since it was originally written.

Mr. Clyde, Mr. Mower, and Mr. Peterson responded to questions from the commission.

Chair Painter communicated the county commissioners' stance on the proposed Snake Valley Agreement: they are opposed to the agreement and support the position of the Millard County commission.

Mr. Mower expressed gratitude to Mr. Clyde, Mr. Peterson, and Mr. Jensen for their work regarding the proposed Snake Valley Agreement.

Mr. Paulick recommended that the information about the agreement from the meeting should be conveyed to all Utah water commissioners.

6. Adjourn

Mr. Allred stated that the September 18, 2012, commission meeting minutes did not accurately reflect Rep. Briscoe's vote on the motion to give a favorable commission recommendation for draft legislation "Sales and Use Tax Allocations for Water Resources Funding." Rep. Briscoe voted in opposition to the motion.

MOTION: Sen. Davis made a motion to correct the September 18, 2012, meeting minutes to accurately reflect Rep. Briscoe's no vote on the motion to give a favorable commission recommendation for draft legislation "Sales and Use Tax Allocations for Water Resources Funding." The motion passed unanimously with Rep. Grover absent for vote.

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MOTION: Sen. Jenkins moved to adjourn. The motion passed unanimously with Rep. Grover and Rep. Noel absent for the vote.

Chair Painter adjourned the meeting at 6:00 p.m.